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ABSTRACT

Some educators and public officials view schooling for character and citizenship as a basic purpose of public education. However, education that touches on personal beliefs and behaviors has become a subject of legal controversy. This paper explores ways in which public schools might deliver instruction about character and citizenship that are both legally defensible and educationally sound. The first part reviews selected statutes, in particular, Nebraska State statutes and sections of the Goals 2000: Educate America Act. The next part reviews selected cases pertaining to general education, special education, behaviors and beliefs, freedom of religion, freedom of expression, and schools' responsibility. Schools should expect civil and respectful student behavior; maintain a safe, orderly environment; teach students about individual responsibility to society; prevent student behavior from disrupting the educational process; explore controversial ideas with students; and help students reflect on the role of rules. (LMI)

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Schooling for Character and Citizenship: Legal Grounds for Pursuing Educational Goals

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Introduction

Educators and other public officials have long viewed schooling for character and citizenship as a basic purpose of public education.

John Dewey (1916), in Democracy and Education, examined the ideas of a democratic society in relation to the enterprise of education. He explained the purposes of education in terms of both the continuation and growth of a society and the preparation of youngsters to become participants in that society. He acknowledged that establishment of character is a comprehensive aim of school instruction and discipline.

William J. Bennett (1993), in The Book of Virtues, noted that the vast majority of Americans share a respect for certain fundamental traits of character, such as honesty, compassion, courage, and perseverance. But he also pointed out that "if we want our children to possess the traits of character we most admire, we need to teach them what those traits are and why they deserve both admiration and allegiance."

Legislatures and courts have also recognized schooling for character and citizenship as a basic purpose of education, which is reflected in both enacted and decisional law. Nevertheless, education that touches on personal beliefs and behaviors has become a subject of legal controversy.

The intent of this discussion is to explore ways in which public schools might deliver instruction about character and citizenship that are both legally defensible and educationally sound. We will begin with a review of selected statutes and cases; we will end with some observations about such schooling from an educational perspective.

Statutory Law

Nebraska statutes include clear directives regarding schooling for character and citizenship. Two sections enacted some years ago are especially pertinent.

Neb. Rev. Stat. §79-214. Character Education; Principles of Instruction; Duty of Teachers. Each teacher employed to give instruction

in any public, private, parochial, or denominational school in the State of Nebraska shall so arrange and present his instruction as to give special emphasis to common honesty, morality, courtesy, obedience to law, respect for the national flag, the Constitution of the United States, and the Constitution of the State of Nebraska, respect for parents and the home, the dignity and necessity of honest labor, and other lessons of a steadying influence which tend to promote and develop an upright and desirable citizenry. (Laws 1927.)

Neb. Rev. Stat. §79-213. American Citizenship; Required Instruction; Patriotic Exercises; Duties of Officers. An informed, loyal, just, and patriotic citizenry is necessary to a strong, stable, just, and prosperous America. Such a citizenry necessitates that every member thereof be fully acquainted with the nation's history, that he be in full accord with our form of government, and fully aware of the liberties, opportunities, and advantages of which we are possessed and the sacrifice and struggles of those through whose efforts these benefits were gained. Since youth is the time most susceptible to the acceptance of principles and doctrines that will influence men throughout their lives, it is one of the first duties of our educational system to so conduct its activities, choose its textbooks, and arrange its curriculum in such a way that the love of liberty, justice, democracy, and America will be instilled in the heart and mind of the youth of the state. . . . . (Laws 1949.)

But it should be noted that more recent legislation setting out the mission of the public schools has little to say about character and citizenship.

Neb. Rev. Stat. §79-4,140.01. Mission of Public School System. The Legislature hereby finds and declares that the mission of the State of Nebraska, through its public school system, is to:

(1) Offer each individual the opportunity to develop competence in the basic skills of communications, computations, and knowledge of basic facts concerning the environment, history, and society;

(2) Offer each individual the opportunity to develop higher order thinking and problem-solving skills by means of adequate preparation in mathematics, science, the social sciences, and foreign languages and through appropriate and progressive use of technology;

(3) Instill in each individual the ability and desire to continue learning throughout his or her life;

(4) Encourage knowledge and understanding of political society and democracy in order to foster active participation therein;

(5) Encourage the creative potential of each individual through exposure to the fine arts and humanities;

(6) Encourage a basic understanding of and aid the development of good health habits;

(7) Offer each individual the opportunity for career exploration and awareness. (Laws 1984.)

Recent federal legislation is consistent with an apparent trend toward academic achievement and appropriate behavior and away from any focus on character and citizenship *per se*.

Consider *Goals 2000: Educate America Act, P.L. 103-227; Title I--National Education Goals, 20 U.S.C. 5811-12.* In 1994, Congress declared a set of National Education Goals, organized according to these categories: (1) School Readiness; (2) School Completion; (3) Student Achievement and Citizenship; (4) Teacher Education and Professional Development; (5) Mathematics and Science; (6) Adult Literacy and Lifelong Learning; (7) Safe, Disciplined, and Alcohol- and Drug-Free Schools; and (8) Parental Participation.

Although the focus of Goals 2000 is not on character and citizenship, Goal (3) provides in objective (B)(iii) that "all students will be involved in activities that promote and demonstrate good citizenship, good health, community service, and personal responsibility," and Goal (7) speaks in subsection (A) to "a disciplined environment conducive to learning" and in subsection (B)(ii) to "the right of students to study in a safe and secure environment."

Case Law

Case law is replete with references to the role of public education in the development of character and citizenship. A number of excerpts are offered by way of illustration.

General Education

From mid-century through the 1990s, the Supreme Court has made clear its view that schooling for character and citizenship is not only appropriate, but a responsibility and expectation of public education.

"The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny." *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 231 (1948).

"[Education] is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)

"[S]ome degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society." *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972).

"The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions: . . . ." *Amback v. Norwick*, 441 U.S. 68, 76 (1979).

"The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order." *Bethel School District v. Fraser*, 478 U.S. 675, 683 (1986).

"Other authorities have perceived public schools as an 'assimilative force' by which diverse and conflicting elements in our society are brought together on a broad but common ground. These perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists." *Ambach v. Norwich*, 441 U.S. 68, 77

(1979) [citations omitted].

"The undoubted freedom to advocate unpopular and controversial views in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate conduct." *Bethel School District v. Fraser*, 478 U.S. 675, 681 (1986).

"Public education serves vital national interests in preparing the Nation's youth for life in our increasingly complex society and for the duties of citizenship in our democratic Republic. The public school conveys to our young the information and tools required not merely to survive in, but to contribute to, civilized society. It also inculcates in tomorrow's leaders the 'fundamental values necessary to the maintenance of a democratic political system .' " *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 278 (1988) (Brennan, J., dissenting) [citations omitted].

Special Education

Related to schooling for character and citizenship is the development of social skills, which has been acknowledged as an important goal in special education programs.

"The record reflects that the IEP forthrightly addresses this area of critical need [inadequate social skills], offering Daniel an array of after-school socialization services." *Lenn v. Portland School Committee*, 998 F.2d 1083, 1091 (1st Cir. 1993).

"A second factor courts should consider in determining whether a child with disabilities can be included in a regular classroom is the comparison between the educational benefits the child will receive in a regular classroom (with supplementary aids and services) and the benefits the child will receive in the segregated, special education classroom. . . . [I]n making this comparison the court must pay special attention to those unique benefits the child may obtain from integration in a regular classroom which cannot be achieved in a segregated environment, i.e., the development of social and communication skills from interaction with nondisabled peers." *Oberti v. Board of Education*, 995 F.2d 1204, 1216

(3rd Cir. 1993).

Behaviors and Beliefs

Case law makes clear that schooling for character and citizenship and requiring student behavior to be conducive to a good learning environment are legally permissible; however, case law makes equally clear that requiring students to affirm a belief or philosophy is not.

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) held unconstitutional a West Virginia statute that required public school students to salute the flag and recite the Pledge of Allegiance. The Court noted that "National unity as an end which officials may foster by persuasion and example is not in question. *Id.* at 640. Nevertheless,

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. . . ."
>
> "We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

Id. at 642.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) held that prohibiting public school students from wearing a black armband to protest the Vietnam War was an unconstitutional infringement of First Amendment freedom of expression. The distinction between the regulation of expression and the regulation of conduct was made clear.

> In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. *Id.* at 511.

> But conduct by the student, in class or out of it, which for any reason--whether it stems from time, place, or type of behavior--materially disrupts classwork or involves substantial disorder or invasion of the rights of other is, of course, not immunized by the constitutional guarantee of freedom of speech. *Id.* at 513.

Freedom of Religion

Distinguishing between the secular and sectarian roots of the American way of life is not without its difficulties. But in public education that distinction between teaching about religion and teaching religion *per se* must be maintained. Again, a key factor is that exposing students to ideas that may be inconsistent with their religious convictions is constitutionally permissible, but requiring acceptance or affirmation is not.

Stone v. Graham, 449 U.S. 39 (1980) (per curiam) held unconstitutional a Kentucky statute that required the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public classroom in the state. The legislature contended that the fundamental legal code of Western Civilization and the Common Law of the United States are grounded in the Ten Commandments; however, the Court concluded that the statute violated the first prong of the three-part establishment clause test, which requires a statute to have a secular legislative purpose. But the Court noted an important distinction: "This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like. *Id.* at 42.

A federal district court held that the use of forty-four specific textbooks in Alabama public schools advanced the religion of secular humanism in violation of the establishment clause. But in *Smith v. Board of School Commissioners of Mobile County*, 827 F.2d 684 (11th Cir. 1987), the circuit court of appeals held that even assuming that secular humanism is a religion for purposes of the establishment clause, the textbooks neither advanced secular humanism nor inhibited theistic religion in violation of the establishment clause. The court of appeals

found that use of the challenged textbooks had the primary effect of conveying information that is essentially neutral in religious content and that none of the books conveyed a message of government approval of secular humanism or disapproval of theism. The court viewed the message conveyed as an attempt to instill in public school children such values as independent thought, tolerance of diverse views, self-respect, maturity, self-reliance, and logical decision making, which is an entirely appropriate and neutral secular effect.

In *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (5th Cir. 1987), plaintiffs argued that a governmental requirement that a person be exposed to ideas he or she finds objectionable on religious grounds constitutes a burden on the free exercise of that person's religion that is prohibited by the first amendment. The court of appeals held that a requirement that public school students study a basal reader series chosen by school authorities does not create an unconstitutional burden under the free exercise clause when the students are not required to affirm or deny a belief or to engage or refrain from engaging in a practice prohibited or required by their religion. The evil absent in this case was the critical element of compulsion.

Freedom of Expression

Although schooling for character and citizenship is permissible, school officials must be aware of constitutional limits on their authority.

Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853 (1982) held that a board of education does not have unfettered discretion to remove books from a school library, and reversed and remanded for trial on the issue of the board's motives for removing the books. In his plurality opinion, Justice Brennan noted "that local school boards must be permitted 'to establish and apply their curriculum in such a way as to transmit community values,' and that 'there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political.'" *Id.* at 864. He also noted that boards "might well defend their claim of absolute discretion in matters of *curriculum* by reliance upon their duty to inculcate community values." *Id.* at 869. Justice Rehnquist agreed with

these sentiments in his dissent. "When it acts as an educator, at least at the elementary and secondary school level, the government is engaged in inculcating social values and knowledge in relatively impressionable young people. . . . [I]t is 'permissible and appropriate for local boards to make educational decisions based upon their personal social, political and moral views.'" *Id.* at 909. But the crux of matter was set out by Justice Blackmun in his concurring opinion; "the State may not suppress exposure to ideas--for the sole *purpose* of suppressing exposure to those ideas--absent sufficiently compelling reasons." *Id.* at 877.

Steirer by Steirer v. Bethlehem Area School District, 987 F.2d 989 (3rd. Cir. 1993), *cert. denied*, held that completion of sixty hours of community service, which was a requirement for graduation from a public high school, did not constitute a form of expression protected by the First Amendment. The stated goal of the program was to "help students acquire life skills and learn about the significance of rendering services to their communities . . . [and] gain a sense of worth and pride as they understand and appreciate the functions of community organizations." *Id.* at 991.

The court noted that "Even teaching values must conform to constitutional standards. The constitutional line is crossed when, instead of merely teaching, the educations demand that students express agreement with the educators' values." *Id.* at 994. But because the program neither required affirmation of a belief nor constituted a form of expression, participation did not implicate constitutionally protected expression; therefore, the court thought it should not say that a school system cannot expose its student to community service by requiring them to perform it.

> To the extent that there is an implicit value judgment underlying the program it is not materially different from that underlying programs that seek to discourage drug use and premature sexual activity, encourage knowledge of civics and abiding in the rule of law, and even encourage exercise and good eating habits. Schools have traditionally undertaken to point students toward values generally shared by the community. In fact, the Supreme Court has stated that public schools have a long history and tradition of teaching values to their students, including those associated with community responsibility. *Id.* at 997.

Schools' Responsibility

Finally, it can be argued that schools teach values by omission as well as by commission. When schools allow inappropriate student expression in the context of school activities, the imprimatur of the school conveys the wrong educational message.

In *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986), the Court noted that

> The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers--and indeed the older students--demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct . . . . *Id.* at 683.

In *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), the Court held that public school "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 273. The Court noted that a school must retain authority to refuse to sponsor student expression that might reasonably be perceived to advocate conduct otherwise inconsistent with 'the shared values of a civilized social order', or to associate the school with any position other than neutrality on matters of political controversy. Otherwise, the schools would be unduly constrained from fulfilling their role as 'a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment.' *Id.* at 272. [citations omitted]

Observations

Schools do teach character and citizenship, either directly or indirectly. There are lessons to be learned in both those things that are expected and those things that are allowed.

The question of "Whose values do we teach?" misses two important points. First, we teach those values about which there is some consensus; second, we teach that there are some values about which there is little consensus and perhaps much controversy.

A set of common beliefs and values defines a culture; schooling is a primary method of transmitting that culture from one generation to the next. Absent that learning, neither the individual nor the society is likely to fare very well.

The American form of government depends on an electorate who will put the common good before personal interests. The primary public policy question should not be "what's in it for me?"

Through the rule of law, many expectations are set and many relationships are defined. Students should reflect on the role of such rules in this country and around the world.

Schools should expect student behavior that is civil and respectful toward others.

Schools should not allow student behavior that is disruptive of the educational process.

Schools can explore with students ideas that are controversial, and in some instances, they should.

Students cannot be required to take or assert the philosophical or religious beliefs and values of others as their own.

Schools ought to be a safe, orderly, caring place. For some children, school is the only such place they know.

The major problems of this world are not the result of lack of knowledge or technical ability; rather, these problems are the result of people not treating one another well. Education needs to focus on the more important issues.

Administrators set the cultural and ethical tone for their schools. How they think and how they act are powerful influences on other staff and students. It is perhaps the very essence of leadership.

Conclusion

Educators, legislators, and jurists have all acknowledged that schooling for character and citizenship is not only permitted, but is indeed expected. Such schooling is not without difficulty, but perhaps the more important things in life seldom are. It is a matter that goes to the heart of the educational enterprise; it is a matter that educators must attend to.